

(i) Failure to comply with rules or regulations that results in damage to the National Security, regardless of whether it was deliberate or negligent.

35. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;

(c) The security violations were due to improper or inadequate training.

GUIDELINE L: OUTSIDE ACTIVITIES

36. *The concern.* Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

37. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Any employment or service, whether compensated or volunteer, with:

(1) The government of a foreign country;

(2) Any foreign national, organization, or other entity;

(3) A representative of any foreign interest;

(4) Any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology;

(b) Failure to report or fully disclose an outside activity when this is required.

38. *Conditions that could mitigate security concerns include:*

(a) Evaluation of the outside employment or activity by the appropriate security or counterintelligence office indicates that it does not pose a conflict with an individual's security responsibilities or with the national security interests of the United States;

(b) The individual terminated the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities.

GUIDELINE M: USE OF INFORMATION TECHNOLOGY SYSTEMS

39. *The concern.* Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer

hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information.

40. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Illegal or unauthorized entry into any information technology system or component thereof;

(b) Illegal or unauthorized modification, destruction, manipulation or denial of access to information, software, firmware, or hardware in an information technology system;

(c) Use of any information technology system to gain unauthorized access to another system or to a compartmented area within the same system;

(d) Downloading, storing, or transmitting classified information on or to any unauthorized software, hardware, or information technology system;

(e) Unauthorized use of a government or other information technology system;

(f) Introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system without authorization, when prohibited by rules, procedures, guidelines or regulations;

(g) Negligence or lax security habits in handling information technology that persist despite counseling by management;

(h) Any misuse of information technology, whether deliberate or negligent, that results in damage to the national security.

41. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) The misuse was minor and done only in the interest of organizational efficiency and effectiveness, such as letting another person use one's password or computer when no other timely alternative was readily available;

(c) The conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification of supervisor.

[71 FR 51475, Aug. 30, 2006]

APPENDIX I TO PART 154—OVERSEAS INVESTIGATIONS

1. Purpose

The purpose of this appendix is to establish, within the framework of this part, 32 CFR part 361 and Defense Investigative Service Manual 20-1, standardized procedures for the military investigative agencies to follow when they perform administrative and investigative functions on behalf of DIS at overseas locations.

2. Type Investigation

This part describes in detail Background Investigations (BI) which are conducted for Limited Access Authorizations and those Special Investigative Inquiries conducted for post-adjudicative purposes. Hereafter they are referred to as LAA and Post-adjudicative cases and are briefly described in paragraphs a and b below:

a. *Limited access authorization.* A level of access to classified defense information that may be granted to a non-U.S. citizen under certain conditions, one of which is that a BI must have been completed with satisfactory results. §154.16(d) further describes LAA cases.

b. *Post-adjudication investigation.* A Personnel Security Investigation (PSI) predicated on new, adverse or questionable security, suitability or hostage information that arises and requires the application of investigation procedures subsequent to adjudicative action on a DoD-affiliated person's eligibility for continued access to classified information, assignment to or retention in sensitive duties or other designated duties requiring such investigation. While these cases are normally predicated on the surfacing of unfavorable information subsequent to favorable adjudication, they may also be opened when favorable information is offered to counter a previous unfavorable adjudication. §154.9(c)(3) further describes these cases.

3. General

a. As a rule, investigative activity in most PSIs occurs in the U.S. even when the Subject is at an overseas location. Therefore, the submission of requests for investigation to the Personnel Investigation Center (PIC) at Baltimore is a required procedure as it ensures uniform application of DoD PSI policy and the efficient dispatch and coordination of leads.

b. When the purpose of the investigation is for an LAA or post-adjudication on a Subject overseas, much, if not all of the leads are at an overseas location. While these cases also may be submitted directly to PIC for action, there is an inherent delay in the mailing of the request, the exchange of leads and reports with PIC, and transmittal of the reports back to the requester. To avoid this delay, the military investigative agencies, when acting for DIS overseas in accordance with 32 CFR part 361 may, with their Headquarters approval, accept these requests for investigations, initiate them and disseminate the results from the same level as they open, close, and disseminate their own cases. Usually this will greatly improve response time to the requester.

c. Under the procedures in paragraph b., above, DIS will not often be in a position to directly exercise its responsibility for con-

trol and direction until the case or lead is in progress or even completed; therefore, adherence to the policy stated in referenced documents, and as modified herein, is mandatory. When the policy of the military investigative agency is at variance with the above, the matter will be referred to the respective headquarters for resolution.

d. Since DIS is ultimately responsible for the personnel security product, it must be kept informed of all such matters referred to in this appendix. For instance, when the investigative agency overseas receives a DD Form 1879, Request for Personnel Security Investigation, which sets forth an issue outside DIS jurisdiction, it will reject the request, inform the requester of the reason and furnish an information copy of the DD Form 1879 and rejection letter to PIC. When the issue/jurisdiction is unclear to the investigative agency, the DD Form 1879 and the perceived jurisdictional question should be promptly forwarded to DIS for action and, if appropriate, to the component's headquarters for information. Questions on the interpretation of DIS or DoD policy and Directives pertaining to individual PSI cases can usually be resolved through direct communications with PIC.

e. 32 CFR part 361 establishes the supporting relationship of the military investigative agencies to DIS in overseas areas, and DIS provides these agencies with copies of relevant policy and interpretive guidance. For these reasons, the investigative agency vice the requester, is responsible for evaluating the request, processing it, collecting and evaluating the results within their jurisdiction for sufficiency, and forwarding the completed product to the appropriate activity.

f. The magnitude of operations at PIC requires that methods of handling LAA and post-adjudicative cases be consistent to the maximum extent possible. For this reason, the procedures for LAA cases are nearly identical to those for post-adjudicative cases. Briefly, the main exceptions are:

(1) The notification to PIC that a post-adjudication case has been opened will be by message, since an issue is present at the outset, whereas notification of an LAA case should normally be by mail.

(2) The scope of the LAA investigation is 10 years or since the person's 18th birthday, whichever is shortest, whereas the leads in a post-djudication case are limited to resolving the issue.

4. Jurisdiction

a. As set-forth in 32 CFR part 361 DIS is responsible for conducting all DoD PSIs in the 50 States, District of Columbia, and Puerto Rico, and will request the military departments to accomplish investigative requirements elsewhere. The military investigative

agencies in overseas locations routinely respond to personnel security investigative leads for DIS.

b. DIS jurisdiction also includes investigation of subversive affiliations, suitability information, and hostage situations when such inquiries are required for personnel security purposes; however, jurisdiction will rest with the military investigative agencies, FBI and/or civil authorities as appropriate when the alleged subversion or suitability issue represents a violation of law or, in the case of a hostage situation, there is an indication that the person concerned is actually being pressured, coerced, or influenced by interests inimical to the United States, or that hostile intelligence is taking action specifically directed against that person. Specific policy guidance on the applicability of these procedures and the jurisdictional considerations are stated in § 154.9.

5. Case Opening

a. A request for investigation must be submitted by using DD Form 1879 and accompanied by supporting documentation unless such documentation is not immediately available, or the obtaining of documentation would compromise a sensitive investigation. Upon receipt of the request, the military investigative component will identify the issue(s), scope the leads, and ensure that the proposed action is that which is authorized for DIS as delineated in this part, 32 CFR part 361 and Defense Investigative Service Manual 201-1.

b. Upon such determination, the Component will prepare an Action Lead Sheet (ALS) which fully identifies the Subject and the scope of the case, and specifies precisely the leads which each investigative component (including DIS/PIC when appropriate) is to conduct.

c. Case opening procedures described above are identical for LAA and post-adjudication cases except with respect to notification of case opening to PIC:

(1) Post-adjudication Cases. These cases, because they involve an issue, are potentially sensitive and must be examined as early as possible by PIC for conformity to the latest DoD policy. Accordingly, the initial notification to PIC of case openings will always be by message. The message will contain at a minimum:

- (a) Full identification of the subject;
- (b) A narrative describing the allegation/facts in sufficient detail to support opening of the case; and
- (c) A brief listing of the leads that are planned.

The DD Form 1879 and supporting documents, along with the agency's ALS, should be subsequently mailed to PIC.

(2) LAA Cases. The notification to PIC of case opening will normally be accomplished by mailing the DD Form 1879, DD Form 398

(Personal History Statement), a copy of the ALS, and any other supporting documents to PIC. Message notification to PIC in LAA cases will only be required if there is a security or suitability issue apparent in the DD Form 1879 or supporting documents.

(d) Beyond initial actions necessary to test allegation for investigative merit and jurisdiction, no further investigative action should commence until the notification of case opening to PIC has been dispatched.

(e) PIC will promptly respond to the notification of case opening by mail or message specifying any qualifying remarks along with a summary of previously existing data. PIC will also provide a DIS case control number (CCN). This number must be used by all components on all case related paperwork/reports.

(The investigating agency may assign its unique service CCN for interim internal control; however, the case will be processed, referenced, and entered into the DCII by the DIS case control number.) The first five digits of the DIS CCN will be the Julian date of the case opening when received at DIS.

6. Case Processing

a. The expected completion time for leads in LAA cases is 50 calendar days and for post-adjudication cases, 30 days, as computed from the date of receipt of the request. If conditions preclude completion in this time period, a pending report of the results to date, along with an estimated date of completion will be submitted to PIC.

b. Copies of all ALSs will be furnished to PIC. In addition, PIC will be promptly notified of any significant change in the scope of the case, or the development of an investigative issue.

c. The procedures for implementing the Privacy Act in PSI cases are set in DIS Manual 20-1-M 1. Any other restrictions on the release of information imposed by an overseas source or by regulations of the country where the inquiry takes place will be clearly stated in the report.

d. The report format for these cases will be that used by the military investigative agency.

e. Investigative action outside the jurisdictional area of an investigative component of office may be directed elsewhere by ALS as needed in accordance with that agency's procedures and within the following geographical considerations:

(1) Leads will be sent to PIC if the investigative action is in the United States, District of Columbia, Puerto Rico, American Samoa, Bahama Islands, the U.S. Virgin Islands, and the following islands in the Pacific: Wake, Midway, Kwajalin, Johnston, Carolines, Marshalls, and Eniwetok.

(2) Leads to areas not listed above may be dispatched to other units of the investigative agency or even to another military agency's

field units if there is an agreement or memorandum of understanding that provides for such action. For case accountability purposes, copies of such "lateral" leads must be sent to the PIC.

(3) Leads that cannot be dispatched as described in paragraph (2) above, and those that must be sent to a non-DoD investigative agency should be sent to PIC for disposition.

f. The Defense Investigative Manual calls for obtaining PIC approval before conducting a Subject interview on a post-adjudicative investigation. To avoid the delay that compliance with this procedure would create, a military investigative component may conduct the interview provided:

(1) All other investigative leads have been completed and reviewed.

(2) The CCN has been received, signifying DIS concurrence with the appropriateness of the investigation.

(3) Contrary instructions have not been received from the PIC.

(4) The interview is limited to the resolution of the relevant issues disclosed by the investigation.

g. Notwithstanding the provisions of paragraphs f.(1) through (4) of this Appendix, if time is of the essence due to imminent transfer of the subject, a subject interview may be conducted at the discretion of the investigative agency.

7. Case Responsibility LAA and PA

Paragraph 3, above, describes the advantages of timely handling which accrue when the military investigative components act for DIS overseas. These actions for DIS may, however, be limited by the component's staffing and resource limitations, especially since some cases require more administration and management than others. Post-adjudication case leads, for instance, will normally be within the geographical jurisdiction of the component that accepted the request for investigation; therefore, relatively little case management is required. In contrast, LAA cases may require leads worldwide, and, therefore, create more complex case management and administration, especially in the tracking, monitoring and reviewing of leads outside the component's geographical area. Accordingly, an investigative component will accept the case from the requester, but only assign itself the appropriate leads within its own geographical jurisdiction and send the balance to PIC for appropriate disposition in accordance with the following:

a. The investigative agency will accept the request for investigation (thereby saving time otherwise lost in mailing to PIC) but limit its involvement in case management by extracting only those leads it will conduct or manage locally.

b. The agency should then prepare an ALS that shows clearly what leads it will cover

and send PIC a copy of this ALS, along with the request for investigation and any other appropriate documentation. It must be clear in the ALS that PIC is to act on all those leads that the unit has not assigned to itself.

c. PIC, as case manager, will assume responsibility for the complete investigative package and, upon receipt of the last lead, will send the results to the appropriate activity.

d. The agency that accepted the case and assigned itself leads may send a copy of its report to the activity in the "Results to" block at the same time it sends the originals to PIC. If so, the letter of transmittal must inform the recipient that these reports are only a portion of the investigation, and that the balance will be forthcoming from PIC. Similarly, PIC must be informed of which investigative reports were disseminated. (This is normally done by sending PIC a copy of the letter of transmittal.)

8. Scope

a. LAA. The scope of investigation is 10 years or from age 18, whichever is the shortest period.

b. Post-Adjudication Cases. There is no standard scope. The inquiries conducted will be limited to those necessary to resolve the issue(s).

9. Case Closing: LAA and PA

a. Whether the investigative component or PIC closes out an investigation, there are three key elements to consider:

(1) The investigative results must be reviewed for quality and conformance to policy.

(2) The results must be sent to the activity listed in the "Results to" block of the DD Form 1879.

(3) PIC must be informed whether or not any dissemination was made by the investigative agency and, if so, what reports were furnished.

b. Investigative results may also be sent to a requester or higher level activity that makes a statement of need for the results. In such instances, a copy of the letter requesting the results and the corresponding letter of transmittal must be sent to PIC for retention.

c. When an investigative agency disseminates reports for PIC, it may use the transmittal documents, letters, or cover sheets it customarily uses for its own cases.

d. The material that is to be provided to PIC will consist of: The originals of all reports, and all other case documentation such as original statements, confidential source sheets, interview logs, requests for investigation, letters of transmittal to adjudicators/requesters, or communications with the requester, such as those that modify the scope of the investigation.

e. For DIS to fulfill its responsibilities under DoD 5220.22–R and the Privacy Act of 1974 all inquiries conducted in its behalf must be set forth in an ROI for the permanent file, whether the case is completed, terminated early, or referred to another agency.

10. Referral

A case may require premature closing at any time after receipt of the DD Form 1879 by the investigative component if the information accompanying the request, or that which is later developed, is outside DIS jurisdiction. For example, alleged violations of law, a counterintelligence matter, or actual coercion/influence in a hostage situation (see paragraph 4.b. of this Appendix) must be referred to the appropriate agency, and DIS involvement terminated. The requester will be informed by letter or indorsement to the DD Form 1879 of the information developed that, due to jurisdictional consideration, the case was referred to (fill in appropriate address) and that the DIS case is closed. The agency to which referral was made and PIC will be furnished with the results of all investigations conducted under DIS auspices. DIS, however, has an interest in the referral agency's actions and no information should be solicited from that agency.

APPENDIX J TO PART 154—ADP POSITION CATEGORIES AND CRITERIA FOR DESIGNATING POSITIONS

OMB Circular A–71 (and Transmittal Memo #B1), July 1978 OMB Circular A–130, December 12, 1985, and FPM Letter 732, November 14, 1978 contain the criteria for designating positions under the existing categories used in the personnel security program for Federal civilian employees as well as the criteria for designating ADP and ADP related positions. This policy is outlined below:

ADP Position Categories

1. Critical-Sensitive Positions

ADP-I positions. Those positions in which the incumbent is responsible for the planning, direction, and implementation of a computer security program; major responsibility for the direction, planning and design of a computer system, including the hardware and software; or, can access a system during the operation or maintenance in such a way, and with a relatively high risk for causing grave damage, or realize a significant personal gain.

2. Noncritical-Sensitive Positions

ADP-II positions. Those positions in which the incumbent is responsible for the direction, planning, design, operation, or maintenance of a computer system, and whose work is technically reviewed by a higher authority

of the ADP-I category to insure the integrity of the system.

3. Nonsensitive Positions

ADP-III positions. All other positions involved in computer activities.

In establishing the categories of positions, other factors may enter into the determination, permitting placement in higher or lower categories based on the agency's judgment as to the unique characteristics of the system or the safeguards protecting the system.

Criteria for Designating Positions

Three categories have been established for designating computer and computer-related positions—ADP-I, ADP-II, and ADP-III. Specific criteria for assigning positions to one of these categories is as follows:

| Category | Criteria |
|--------------|--|
| ADP-I | <p>Responsibility or the development and administration of agency computer security programs, and also including direction and control of risk analysis and/or threat assessment.</p> <p>Significant involvement in life-critical or mission-critical systems.</p> <p>Significant involvement in life-critical or mission-critical systems.</p> <p>Responsibility for the preparation or approval of data for input into a system which does not necessarily involve personal access to the system, but with relatively high risk for effecting grave damage or realizing significant personal gain.</p> <p>Relatively high risk assignments associated with or directly involving the accounting, disbursement, or authorization for disbursement from systems of (1) dollar amounts of \$10 million per year or greater, or (2) lesser amounts if the activities of the individual are not subject to technical review by higher authority in the ADP-I category to ensure the integrity of the system.</p> <p>Positions involving <i>major</i> responsibility for the direction planning, design, testing, maintenance, operation, monitoring, and/or management of systems hardware and software.</p> <p>Other positions as designated by the agency head that involve relatively high risk for effecting grave damage or realizing significant personal gain.</p> |
| ADP-II | <p>Responsibility for systems design, operation, testing, maintenance, and/or monitoring that is carried out under technical review of higher authority in the ADP-I category, includes, but is not limited to:</p> <p>(1) access to and/or processing of proprietary data, information requiring protection under the Privacy Act of 1974, and Government-developed privileged information involving the award of contracts;</p> |